

**The claimant presented medical documentation establishing that he was capable of returning to work after a three-month restriction, and was eligible for benefits under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0069 3661 92**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, effective January 17, 2021. On May 26, 2021, the agency issued a Notice of Disqualification under G.L. c. 151A, § 24(b), which indefinitely disqualified the claimant. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination in part, reversed it in part, and denied benefits for the period beginning January 17, 2021, through June 27, 2021, in a decision rendered on November 5, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working between January 17, 2021, and June 27, 2021, and, thus, was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to allow the claimant to provide additional evidence regarding his capability of, and availability for, work and the nature of his work search. The claimant and his representative attended the remand hearing, which took place over the course of two sessions. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that, from January 17, 2021, to June 27, 2021, the claimant was incapable of working due to medical restrictions, but, since June 28, 2021, was able and available for full-time work and actively seeking work, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant opened a claim for unemployment benefits with an effective date of January 17, 2021.

2. As of January 26, 2021, the claimant was medically restricted from working for two months because he was diagnosed with [c]ancer. The claimant's legs were unstable[.]
3. Between January 26, 2021, and March 25, 2021, the claimant was restricted from doing any work.
4. On March 25, 2021, the claimant was medically advised that he may return to work in three months. The claimant experienced limitations in the form of "lower extremity weakness due cancer" which caused his legs to tremble, inhibiting his ability to stand. The claimant also experienced dizziness and vomiting.
5. Between March 25, 2021, and June 27, 2021, the claimant experienced lower extremity weakness daily. As he got up from his bed, he would begin to tremble. The claimant was unable to walk or report to a bathroom without assistance.
6. As of June 28, 2021, the claimant was medically released to return to work with restrictions. The restrictions were to avoid lifting, carrying, pushing anything heavier than ten pounds and to not climb ladders.
7. As of June 28, 2021, the claimant was available for full-time work.
8. As of June 28, 2021, the claimant has searched for work through multiple online job sites and contacting potential employers for work via phone.
9. After June 28, 2021, the claimant searched for receptionist work and other work that would not require him to stand all day. The claimant searched for work that he could perform remotely.
10. Between June 28, 2021, and the date of the hearing, the claimant continued to experience lower extremity weakness "all the time". On some days, the claimant was able to get out of bed and complete his tasks without assistance.
11. In October 2021, the claimant's medical condition deteriorated.
12. The claimant had surgery on November 9, 2021. After his surgery, the claimant vomited less and became more mobile.
13. On December 9, 2021, the claimant was medically restricted from working due to multiple chronic health conditions.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error

of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, we note that, with respect to Consolidated Finding # 6, the claimant was also restricted from pulling anything more than ten pounds. *See* Remand Exhibit # 6. As discussed more fully below, while we concur with the review examiner's conclusion that the claimant is ineligible for benefits from January 17, 2021, through June 27, 2021, we believe the record establishes that the claimant's eligibility to receive benefits is limited to the period of June 28, 2021, through September 30, 2021.

At issue in this case is the claimant's eligibility under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)  
Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted. . . .

Under this section of the law, the claimant bears the burden of proving that he is able, available for, and actively seeking employment.<sup>1</sup>

In her decision, the review examiner applied G.L. c. 151A, § 24(b), in a straightforward manner. She reasoned that, since the claimant was not capable of working at all from January 17, 2021, through June 27, 2021, the claimant was not eligible for benefits under the statute.

According to medical documentation provided by the claimant's physician, dated January 26, 2021, the claimant was not capable of working full-time or part-time for a period of two months, through March 26, 2021, with or without restrictions. *See* Consolidated Finding # 2 and Remand Exhibit 2.<sup>2</sup> In another letter dated March 25, 2021, the claimant's physician indicated that the claimant may return to work in "3 months [sic] estimation – 6/28/21," and described the claimant's limitation as "lower extremities [sic] due to cancer." *See* Consolidated Finding # 4 and Remand Exhibit 2. In a third letter dated January 3, 2022, the claimant's physician clarified his March 25, 2021, note and explained that the claimant had been cleared to return to work on June 28, 2021, although the claimant was not allowed to climb ladders or lift, carry, push, or pull anything heavier than ten pounds. *See* Consolidated Finding # 6 and Remand Exhibit 6. As a result, we agree that the evidence presented does not demonstrate that the claimant was capable of working from January 17, 2021, through June 27, 2021.

The review examiner, however, found that the claimant was medically released to return to work with restrictions as of June 28, 2021. *See* Consolidated Finding # 6. The record further indicates

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<sup>1</sup> In accordance with federal guidance relating to the COVID-19 public health emergency, effective November 2, 2020, the DUA had waived "work search requirements until such time as the COVID-19 emergency measures have been lifted." DUA UI Policy and Performance (UIPP) Memorandum 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021. UIPP Memorandum 2021.04 (May 20, 2021), p. 2. As such, the claimant's work search requirement under G.L. c. 151A, § 24(b), was waived from the beginning of his claim, effective the week beginning January 17, 2021, until the week ending June 12, 2021. As of the week beginning June 13, 2021, the claimant has been obligated to actively search for new employment.

<sup>2</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

that, since becoming capable of working, the claimant was available for, and actively seeking, full-time work through September 30, 2021. *See Consolidated Findings ## 7–9.*

However, the record also suggests that the claimant could not work again as of October, 2021, because his medical condition declined and he had surgery the following month. *See Consolidated Findings ## 11–12.* Subsequently, on December 9, 2021, the claimant was medically restricted from working, due to multiple chronic health conditions. *See Consolidated Finding # 13.*

Thus, the record demonstrates that the claimant has met all three requirements of G.L. c. 151A, § 24(b), from June 28, 2021, through September 30, 2021. However, the record does not establish that the claimant met those requirements beginning October 2021.

We, therefore, conclude as a matter of law that the claimant was incapable of working from January 17, 2021, through June 27, 2021. We further conclude that the claimant was capable of, available for, and actively seeking work pursuant to G.L. c. 151A, § 24(b), from June 28, 2021, through September 30, 2021. The Board will request that the DUA investigate the claimant’s eligibility for benefits during the period beginning October 1, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning January 17, 2021, through June 27, 2021. The claimant is entitled to receive benefits for the week beginning June 28, 2021, through September 30, 2021, if otherwise eligible. The Board will ask the DUA to investigate the claimant's eligibility for benefits and issue a new determination as to whether the claimant has met the requirements of G.L. c. 151A, § 24(b), during the period beginning October 1, 2021.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 21, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JMO/th